

DIVISION IV

SAM BIRD, Judge
ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

CA06-551

DECEMBER 13, 2006

USA TRUCK, INC.

APPELLANT

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION,
[F413437]

V.

BRENT STAGGS

APPELLEE

AFFIRMED

This workers' compensation case concerns a compensable injury that appellee Brett Staggs sustained to his low back on December 22, 2004 while working as a truck driver for appellant USA Truck, Inc. After paying some medical expenses, USA Truck controverted Staggs's entitlement to additional medical treatment and to temporary total disability. In May 2005 a hearing was held before an administrative law judge to determine these issues. The law judge found that Staggs had proven entitlement to additional medical treatment and temporary total disability benefits beginning December 23, 2004, to a date yet undetermined. The Workers' Compensation Commission affirmed the opinion of the law judge in a decision filed on March 10, 2006. Appellant contends on appeal that no substantial evidence supports the Commission's decision that Staggs was entitled to temporary total disability

compensation and to ongoing medical treatment. We affirm the decision of the Commission.

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is “that period for healing of an injury resulting from an accident.” Ark. Code Ann. § 11-9-102(12) (Supp. 2005). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *J.A. Riggs Tractor Co. v. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990). Whether the healing period has ended is a factual determination to be made by the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995). If any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, the employee shall not be entitled to any compensation during the continuance of the refusal, unless in the opinion of the Workers’ Compensation Commission, the refusal is justifiable. Ark. Code Ann. § 11-9-526 (Repl. 2002).

Arkansas Code Annotated section 11-9-508 (Repl. 2002) requires employers to provide medical services that are reasonably necessary for treatment of compensable injuries. Furthermore, it is within the purview of Commission to accept or reject medical opinions and determine their medical soundness and probative force. *Brotherton v. White River Area Agency*, 93 Ark. App. 432, ___ S.W.3d ___ (2005). Medical evidence, although necessary to establish the existence and extent of an injury, is not essential to establish a causal

connection between the injury and the employment. *Wal-Mart Stores, Inc. v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

The occurrence of Staggs's compensable injury, his subsequent medical history, and USA Truck's offer of light-duty employment are essentially undisputed. On December 22, 2004 Staggs was working in his home town of Orange, Texas. He injured his lower back while pulling on a metal lever in an attempt to distribute the weight of his trailer by sliding the tandems. He was sent by the company to Dr. Glenn Montet the same day. Dr. Montet, noting low back pain with no radiation and diagnosing a left sacroiliac strain, released Staggs to light-duty work.

Of his own accord Staggs went the next day, December 23, to his family physician, Dr. Servet Satir. Staggs complained at that time of back pain, radiation, and numbness; he returned to Dr. Satir on Monday, December 27, reporting worsened pain and increased numbness that had occurred over the weekend at home when "he went to get up and felt a pop in his back." Staggs was hospitalized for four days and underwent an MRI on December 28. The MRI revealed degenerative disc disease at L4-5, with a three-millimeter bulging disc and disc disease at L5-S1 with a four-millimeter "bulge of the disc producing pressure on the thecal sac."

Dr. Satir's office notes of January 3, 2005 reflect Staggs's complaints of tingling, numbness, and pain radiating to both legs; Dr. Satir took Staggs off work and stated that he should be referred to a neurosurgeon. On January 4, 2004 Staggs returned to Dr. Montet, as

required by USA Truck. Dr. Montet noted that the MRI showed a bulge at L5-S1, that Staggs exhibited clinical signs of bilateral leg weakness and numbness, that he had been taken off work by Dr. Satir; and that Staggs “says there’s no way he can work.” Dr. Monet put Staggs on no-work status and, like Dr. Satir, referred Staggs to a neurosurgeon.

Staggs was first seen by neurosurgeon Dr. Marco Silva on January 26, 2005. A certificate for return to work, dated April 11, 2005, shows that Dr. Silva released Staggs to “do office work if tolerated” on April 18, 2005. A chart note of April 27, 2005 reflects that Dr. Silva saw Staggs for follow-up after physical therapy, use of a TENS unit, and two series of epidural injections. The note continues:

He says that his back pain is better, but he is now complaining of very low buttock pain. He feels that ever since he has been off the Mobic that his right-sided symptoms are a bit worse, however, he needed to be off this in order to perform the epidural steroid injections.

In the past I was asked to consider sending him for light duty which I think he may very well be able to do. However, his employer requested in a letter dated April 14, 2005 that he go to Arkansas to work. The patient is concerned that given the continued severity of the pain that he will not be able to tolerate driving back and forth. He also requires to lie down intermittently throughout the day. Based on my discussion with the patient, at this point I do not think that he will be able to tolerate light duty given the concerns of the patient.

I had requested that physical therapy be reinstated; however I have not received approval for such.

He is due to get another epidural steroid injection from Dr. Dumitru tomorrow and I gave him a prescription to perform a general lumbar epidural as well as a right S1 joint injection.

. . . .

Recommendation: At this point, we will continue with conservative therapy and will request that he be put back in therapy. Once he completes his epidural steroid injections, [I] would recommend he restart his Mobic. As I mentioned above, given the patient's complaints and symptoms, I would discourage him from having light duty since he has to [lie] down intermittently because of back pain.

An April 14, 2005 letter from USA Truck to Staggs offered him light-duty employment at the corporate office in Van Buren, Arkansas. The letter informed Staggs that he would be allowed to travel back to Texas for any necessary follow-up appointments with authorized treating physicians, that any ongoing physical therapy would be arranged with a local group, that transportation would be arranged for him should he choose not to drive his own vehicle, and that hotel accommodations would be provided in Fort Smith while he worked light duty. Staggs did not respond to the letter.

The hearing before the administrative law judge was conducted in Fort Smith, Arkansas, on May 12, 2005. Staggs testified that he showed Dr. Silva the letter offering light-duty employment and told him that he [Staggs] did not think he could tolerate driving back and forth to Van Buren. He testified that USA Truck had sent him a bus ticket to attend the hearing, a fifteen-hour bus trip from his home, but that he had flown. He said that his condition had worsened since talking to Dr. Silva on April 27, 2005, with swelling in his back that caused his tail bone to burn and with pain at L4-L5 and L5-S1, his whole sacroiliac joint, and his right leg. He said that he would not be able to do clerical duty because he needed to lie down every hour or so, that he might be able to do it if USA would accommodate this limitation, but that he would be heavily medicated. He also testified that

his pain had been constant after the incident of December 22, 2004 and that nothing had happened to exacerbate it.

Whether substantial evidence supports the Commission's finding that Staggs was entitled to temporary total disability from December 22, 2004 to a date yet to be determined as well as ongoing medical treatment as the result of a compensable event

Reasoning as follows, the Commission rejected USA Truck's position that it had offered Staggs appropriate light duty, that the healing period had ended, and that an independent intervening cause had occurred:

[W]e must point out the April 27, 2005, note from authorized physician Dr. Silva, to wit: "at this point I do not think that he will be able to tolerate light duty given the concerns of the patient." [USA] argues that the Commission should minimize this note, because [it] was based on "the concerns of the patient." The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). Since the evidence in the present matter demonstrates that the claimant remained within a healing period as of April 2005, the Full Commission is unable to minimize this language from a treating physician. There is otherwise at this time no medical evidence before the Commission indicating that the claimant has reached the end of his healing period. Nor is there any evidence to support the respondent's argument that there was an "independent intervening cause" which ends the respondent's liability.

On appeal of a workers' compensation case, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). Substantial evidence is that relevant evidence which reasonable minds might accept as adequate to support a conclusion. *Roberson v. Waste Mgmt.*, 58 Ark. App. 11, 944 S.W.2d 858 (1997).

USA Truck contends that substantial evidence does not support the Commission's finding that Staggs's inability to work was causally related to his compensable back strain

of December 22, 2004 or to any other compensable event. USA maintains that Staggs was involved in an incident at his home on December 26, 2004 that made his condition worse, gave rise to new complaints, and/or caused him to become wholly unable to work. USA asserts that this alleged event constituted an independent intervening cause for which USA has no liability and, thus, that the event cannot support the Commission's award of temporary total disability. USA also asserts that it is not liable for medical treatment after December 26 because there is no causal connection between Staggs's compensable injury and the treatment he received subsequent to the intervening incident. Finally, USA asserts that even if substantial evidence supports the Commission's finding that Staggs is entitled to temporary total disability, substantial evidence does not support the finding that he is entitled to temporary total disability subsequent to April 18, 2005, when light-duty work was made available to him.

USA Truck points to Staggs's testimony and the medical records to support its argument that there was an independent intervening incident on the weekend after the compensable injury occurred. USA points to Dr. Montet's report of low back pain with no radiation, diagnosed left sacroiliac strain, and his releasing Staggs to light duty on December 22, 2004. USA notes Staggs's complaints the next day to Dr. Satir of back pain, radiation, and numbness, followed by complaints after the weekend at home that the pain worsened and the numbness increased when "he went to get up and felt a pop in his back... . He stated that

the pain basically dropped him to the floor and he could not get up for a period of time without assistance.”

USA Truck argues that, even if Staggs was entitled to total temporary disability benefits, entitlement to those benefits ended on April 18, 2005. USA notes that Dr. Silva released Staggs to return to work for “office work if tolerated” as of April 18; that USA sent Staggs a letter offering light-duty employment beginning on April 18; that Staggs failed to respond to the letter; and that on April 27 Dr. Silva changed his recommendation to say that he did not think Staggs could tolerate light duty, given Staggs’s concerns.

Appellant’s argument ignores the Commission’s role as a fact finder. Whether one’s condition is causally related to his work and which medical services are reasonably necessary for the treatment of a work-related injury are questions of fact for the Commission. *See Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998); *American Greetings Corp. v. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). Likewise, the determination of the existence of an independent intervening cause is a question of fact for the Commission to determine. *Oak Grove Lumber Co., supra*.

Here, the Commission specifically found that there was no evidence supporting the existence of an independent intervening cause on February 26, 2005. The Commission also found that Staggs remained within the healing period related to his compensable injury, and it refused to minimize the opinion of Dr. Silva that Staggs would not be able to tolerate light duty “given the concerns of the patient.”

USA's argument that an independent intervening event occurred turns on credibility and interpretation of the evidence. Because these were matters for the Commission to decide, the Commission's finding that no independent intervening event occurred is affirmed. There was evidence before the Commission that Staggs was scheduled for more epidural injections, that his pain had increased, that he was on pain medication, that he needed to lie down periodically, and that at least some travel would be required between his home in Orange, Texas and Van Buren, Arkansas, where the office job was available. We hold that substantial evidence supports the Commission's finding that Staggs remained in his healing period and was entitled to temporary total disability from the date of his compensable injury to a date yet undetermined.

Affirmed.

HART and GRIFFEN, JJ., agree.